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BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
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WILLIAM A. MUNDELL
Commissioner
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Commissioner
MIKE GLEASON
Commissioner
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Commissioner

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IN THE MATTER OF THE FORMAL
COMPLAINT OF PAC-WEST TELECOMM
SEEKING ENFORCEMENT OF THE
INTERCONNECTION AGREEMENT
BETWEEN PAC-WEST TELECOMM AND
QWEST CORPORATION

) DOCKET NO. T-010518-05-0495
) T-036938-05-0495
)
) **PAC-WEST TELECOMM'S**
) **SECOND CITATION OF**
) **SUPPLEMENTAL AUTHORITY**
)

Pac-West Telecomm hereby files as a supplemental authority the following
document: Opinion and Order, Pennsylvania Public Utilities Commission, Jan. 12, 2006,
Petition of US LEC of Pennsylvania, Inc. for Arbitration with Verizon Penn. Case No. A-
310814F7000.

Respectfully submitted this 10th day of March, 2006.

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(Publication page references are not available for this document.)

Petition of US LEC of Pennsylvania, Inc. for Arbitration with Verizon
Pennsylvania, Inc. Pursuant to Section 252 of the Telecommunications Act of
1996.

A-310814F7000

Pennsylvania Public Utility Commission
January 12, 2006; Entered January 18, 2006

OPINION AND ORDER

Before Holland, Chairman, Cawley, Vice Chairman, Shane, Pizzingrilli, and
Fitzpatrick, Commissioners.

BY THE COMMISSION:

Before the Commission for disposition are two separate and competing draft language proposals for inclusion in an interconnection agreement filed by Verizon Pennsylvania Inc. (Verizon PA) and US LEC Pennsylvania, Inc. (US LEC), submitted pursuant to 47 U.S.C. § 252(e) and the Commission's Implementation Orders. [FN1] Verizon PA and US LEC have presented their respective submittals to implement the Commission's directives and to comply with this Commission's Opinion and Orders entered April 18, 2003 and October 7, 2003, in the above-captioned arbitration of unresolved issue. See 47 U.S.C. § 252. This Opinion and Order addresses the Parties' proposed language on three outstanding matters for which they were unable to reach a consensus.

FN1. In Re: *Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered on June 3, 1996; Order on Reconsideration entered on September 9, 1996); *Proposed Modifications to the Review of Interconnection Agreements* (Order entered on May 3, 2004).

History of the Proceeding

Verizon PA and US LEC first entered into an Interconnection Agreement in 1999. On November 17, 2001, Verizon PA and US LEC began negotiations for a new Interconnection Agreement (Agreement). The Parties were able to resolve the majority of the contractual issues. However, on April 26, 2002, US LEC filed a Petition which initially referred eleven unresolved issues to the Commission for arbitration. Three of those issues (Issue Nos. 7, 10 and 11) were subsequently resolved by the Parties prior to the issuance of the Recommended Decision of Administrative Law Judge (ALJ) Louis G Cocheres, acting as arbitrator, in this matter. The Petition for Arbitration included a copy of the proposed Interconnection Agreement and all of its attachments. Verizon PA filed a timely response on May 21, 2002.

On September 17, 2002, the Recommended Decision of ALJ Cocheres was issued. The Parties filed Exceptions to said decision and by Order entered April 18, 2003, the Commission adopted the Recommended Decision, in part, and modified it, in part, and directed the Parties to file an Interconnection Agreement consistent with the directives set forth in Ordering Paragraphs Nos. 1 through 15.

By Opinion and Order entered October 7, 2003, the Commission denied a Petition for Reconsideration filed by US LEC and granted a Petition for Clarification filed by Verizon PA with regard to the April 18, 2003 Order (hereinafter Order on Reconsideration). Various requests for an extension of time to file a final compliance Interconnection Agreement were subsequently granted by the Commission.

On January 7, 2004, Verizon PA and US LEC filed separate and competing, draft language for inclusion in a final Interconnection Agreement (the subject of this Opinion and Order). [FN2] Both Parties note in their January 7, 2004 filings that, except for some unresolved issues, they have negotiated language which they agree is

consistent with the Commission's April 18 and October 7, 2003 Orders. The draft language for unresolved issues pertain to: 1) the definition of "Interconnection Points" (Section 2.45 of the Glossary) and how financial obligations for the transport of traffic should be allocated (Section 7.1.1.3 of the Interconnection Attachment); 2) the definition of "Measured Internet Traffic" (Section 2.56 of the Glossary); and 3) the appropriate language to conform with the Commission's Orders regarding intercarrier compensation for Virtual NXX traffic. (Section 7.3.8 of the Interconnection Attachment).

FN2. Rather than file a separate, competing interconnection agreement, US LEC only submitted its proposed contract language to implement the Commission's decisions which remain in dispute. (January 7, 2004, Filing at 1-2).

As noted, Verizon PA filed a complete Interconnection Agreement containing all agreed-upon contract language as well as proposed language on matters for which the Parties were not able to reach a resolution. US LEC only submitted proposed contract language for those matters that remain in dispute. US LEC explained that it will file a single, composite Interconnection Agreement with the Commission for approval upon resolution of the unresolved issues by the Commission.

Discussion

In its filing, US LEC summarizes the matters at issue as follows:

At issue are Section 2.45 of the Glossary and Section 7.1.1.3 of the Interconnection Agreement [Attachment]. These sections address "Interconnection Points" in the Agreement, particularly with respect to how the financial obligations for the transport of traffic are allocated. Also at issue is Section 2.56 of the Glossary defining "Measured Internet Traffic." Finally, US LEC and Verizon have been unable to agree on language at Section 7.3.8 of the Interconnection Attachment to implement the Commission's decision regarding intercarrier compensation for Virtual NXX traffic (identified as Virtual FX traffic in the contractual language).

A. Interconnection Arrangements in the Philadelphia and Pittsburgh LATAs

Both Parties agree that the primary dispute between them is with regard to their differing interpretations of the Order on Reconsideration as it applies to existing interconnection arrangements and financial obligations between the Parties in the Pittsburgh and Philadelphia LATAs. The Pittsburgh and Philadelphia LATAs are treated differently than the other LATAs. Under the existing interconnection arrangement for the Pittsburgh and Philadelphia LATAs, Verizon PA provides direct trunking to US LEC's switch for traffic that Verizon PA customers originate, rather than routing the traffic through Verizon PA's tandem switch as it does for all other LATAs.

US LEC argues that the Order on Reconsideration specifically recognized the validity of the existing arrangements and preserved them, while requiring an entirely different arrangement in other LATAs in which US LEC and Verizon PA interconnect in the future. US LEC maintains that Verizon PA must continue allowing US LEC to maintain an interconnection point (IP) or point of interconnection (POI) on US LEC's network in the Philadelphia and Pittsburgh LATAs until such time that US LEC agrees with Verizon PA to move the IP or POI to a point on Verizon PA's network. (US LEC Compliance Filing at 2-3).

Verizon PA, on the other hand, argues that nothing in the Commission's Orders or federal law requires that existing arrangements be maintained. Verizon PA specifically objects to US LEC's proposed language that would provide that existing POI(s) or IP(s) be maintained, except as otherwise agreed by the Parties. Although Verizon PA previously agreed to the establishment of an IP that is not on its network, it states that it does not agree to waive its right in this regard. (Filing at 5). Verizon PA, therefore, proposes language that would limit US LEC's right to choose an IP or a POI to points on Verizon PA's network, unless both Parties mutually agree to establish an IP or POI on US LEC's network. (VZ-PA Compliance Filing at 4).

In our *Order on Reconsideration*, we recognized that our adoption of the US LEC language, without some modification, may result in an interpretation that could be considered inconsistent with federal law. We also clarified that "although the FCC's binding regulation at 47 C.F.R. § 51.305(a)(2) specifies that the POI must be 'within the incumbent LEC's network,' the Parties are not prohibited from mutually agreeing upon locating the POI outside the incumbent LEC's network, as is the case in the Philadelphia LATA." In reaching a disposition on the instant disputed language, we note that we did not intend to suggest in the *Order on Reconsideration* that Verizon PA has a legal obligation to maintain the existing arrangements in the Philadelphia and Pittsburgh LATAs until such time that US LEC voluntarily authorizes Verizon PA to move the existing IP or POI from a point on US LEC's network to a point on Verizon PA's network. The fact that Verizon PA formerly agreed to such an arrangement should not be construed that it has waived its right to discontinue a practice which is contrary to federal regulations. In the *Order on Reconsideration*, we merely stated that the Parties are not prohibited from mutually agreeing upon locating the POI outside the incumbent LEC's network. The purpose of that statement was to clarify that this Commission would not prohibit the Parties from mutually adopting something other than the FCC's binding regulation at 47 C.F.R. § 51.305(a)(2), which specifies that the POI must be "within the incumbent LEC's network." [FN3]

FN3. We also note that in our rejection of the VGRIPS issue in the April 18, 2003 Order, we noted a "compromise" reached in a *Sprint Arbitration Order*, wherein the parties "grandfathered" existing arrangements, to be distinguishable from this proceeding. (Slip op. at 15).

In light of the above, we conclude that Verizon PA's proposed language is more encompassing and consistent with our intention than US LEC's language. While preservation of the *status quo* is desirable in commercial arrangements, we do not imply that there is an unqualified right to the preservation of the *status quo*. Upon due notice consistent with the terms of the Interconnection Agreement between the Parties, the existing arrangements may be subject to change. Therefore, we shall direct that the revised, true and correct copy of the Interconnection Agreement that contains Verizon PA's proposed language for IP (Interconnection Point) in Section 2.45 of the Glossary and in Section 7.113 of the Interconnection Agreement Attachment be adopted. The specific language to be included in each of those sections is as follows:

Final Glossary Language:

Section 2.45 IP (Interconnection Point)

Pursuant to the Opinions and Orders entered by the Commission on April 18, 2003 and October 7, 2003 in Docket A-310814F7000 (collectively, "Arbitration Order"), "interconnection point" or "IP" means the technically feasible point on Verizon's network in a LATA at which the Compensation rates or Intercarrier Compensation rates for Measured Internet Traffic. By way of example, IPs would include an applicable Verizon Tandem Wire Center or Verizon End Office Wire Center but, notwithstanding any other provision of this Agreement or otherwise, would not include a US LEC Wire Center, US LEC Switch or any portion of a transport facility provided by Verizon to US LEC or another party between (x) a Verizon Wire Center or switch and (y) the Wire Center or switch of US LEC or another party.

Final Interconnection Agreement Attachment Language:

7.1.1.3 In any LATA where the Parties are already interconnected prior to the effective date of this Agreement, and except as otherwise agreed by the Parties, the Parties may mutually agree to maintain existing POI(s) and IP(s).

B. Definition of Measured Internet Traffic

Next, the Parties are unable to agree on the appropriate compliance language that should be included in Section 2.56 of the Glossary (definition of "Measured Internet

Traffic"). US LEC proposes language in the Glossary that would include all intraLATA VNXX, or Virtual FX (V/FX), traffic [FN4] to ISPs within the definition of "Measured Internet Traffic," whereas Verizon PA's proposed language does not.

FN4. Virtual NXX traffic is identified as Virtual FX traffic in the contractual language.

Specifically, US LEC's language would include minutes of traffic for all locally dialed ISP-bound traffic that originates and terminates within the same LATA whereas Verizon PA's proposed language would exclude all ISP-bound VNXX traffic from the definition by limiting the scope of locally dialed ISP-bound traffic minutes to that traffic that originates and terminates within the same Verizon PA-defined local calling areas.

US LEC argues that nothing in the Commission's April 18, 2003 Order, or the Order on Reconsideration, requires Verizon PA's result. US LEC opines that the Commission made no distinction between "local" ISP-bound traffic and "virtual NXX" ISP-bound traffic and that its definition of "Measured Internet Traffic" encompasses all ISP-bound traffic for trunking and traffic measurement purposes.

Verizon PA argues that the definitions for Traffic Factor 1 (formerly "Percentage Interstate Usage") and Traffic Factor 2 (formerly "Percent Local Usage") in the Glossary at §§ 2.93-2.94, which specify that "Measured Internet Traffic" should not be treated as either interstate traffic or intrastate toll traffic in calculating Traffic Factors 1 and 2, together with the definition of "Measured Internet Traffic" in Section 2.56 of the Glossary, are used primarily for the calculation of billing factors when a Billing Party lacks the capability, on an automated basis, to use calling party number information to classify traffic delivered by the other Party by Traffic Rate type.

Verizon PA objects to US LEC's proposed language because it would place VNXX or V/FX ISP calls under the FCC's interim intercarrier compensation regime for ISP-bound traffic that the FCC adopted in the ISP Remand Order. Verizon contends that the FCC's interim compensation regime applies only to calls where the ISP and the calling party are located in the same local calling area. As such, Verizon proposed language that would define "Measured Internet Traffic" to include dial-up switched Internet Traffic that originates in a Verizon PA local calling area and is delivered to an ISP served by the other Party at a point in the same Verizon PA local calling area.

In conjunction with the definition of "Measured Internet Traffic," US LEC proposes language in Section 7.3.8 of the Interconnection Attachment that, *inter alia*, would state that "intercarrier compensation for V/FX Internet Traffic is subject to Section 8.1." [FN5] Verizon PA proposes language that would state that "the Parties disagree as to the intercarrier compensation applicable to V/FX Internet Traffic." In addition, US LEC offers a compromise proposal that would omit both of the Parties' proposed language in Section 7.3.8. In support of its compromise proposal, US LEC alleges that omitting both of the Parties' proposals would not diminish either Party's rights and is of the view that the issue is addressed elsewhere in the Agreement. [FN6] Verizon PA, on the other hand, believes that memorializing its proposed language that a disagreement exists will prevent future disputes, whether raised by US LEC or another competing carrier that adopts the instant interconnection agreement.

FN5. Section 8.1 is included under the general heading "Other Types of Traffic" and states the following:

Notwithstanding any other provision of this Agreement or any Tariff: (a) the Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of Internet Traffic shall be governed by the terms of the FCC Internet Order and other orders and FCC regulations; and, (b) a Party shall not be obligated to pay any intercarrier compensation for Internet Traffic that is in excess of the intercarrier compensation for Internet Traffic that such Party is required to pay under the FCC Internet Order and other applicable FCC

orders and FCC Regulations.

FN6. US LEC failed to provide a citation as to where this issue is specifically addressed in the Interconnection Agreement.

In disposing of this matter, we note that both Parties agree that federal law governs any compensation that may be due for ISP-bound VNXX traffic. However, it is certain that they specifically disagree about the intent of federal law as to how the FCC's interim intercarrier compensation plan, which was adopted in the *ISP Remand Order*, should be applied.

US LEC is of the opinion that the interim intercarrier compensation rates for ISP-bound traffic includes both VNXX ISP-bound calls as well as calls to ISPs that are located in the same local calling area as the calling party. Verizon PA, as noted, opines that the FCC's interim intercarrier compensation plan applies only to calls where the ISP and the calling party are located in the same local calling area. In light of the fact that we have previously concluded in our April 18, 2003 Order that the FCC's *ISP Remand Order* has preempted rate authority by state commissions over intercarrier compensation for ISP-bound traffic, it is clear that this Commission lacks the authority to resolve the rate issue at hand. [FN7] Consequently, we are of the opinion that, based on federal law, Verizon PA's proposal with regard to the definition of "Measured Internet Traffic" in Section 2.56 of the Glossary attempts to achieve a result relative to VNXX that is not the state of federal law.

FN7. See April 18, 2003 Order at 57, n.46.

In *In the Matter of Starpower Communications, LLC v. Verizon South, Inc.*, 18 FCC Rcd 23625 (Rel. November 7, 2003), 2003 FCC LEXIS 6245, the FCC granted a complaint for damages filed by Starpower Communications, Inc. (Starpower) against Verizon South, Inc., (Verizon South) for reciprocal compensation for Starpower's delivery of traffic originated by Verizon South's customers bound for Starpower's ISP customers, irrespective of whether such customers were served by Starpower through virtual NXX. It appears that US LEC's definition of Measured Internet Traffic encompasses all ISP-bound traffic dialed on a local basis, including virtual NXX ISP-bound traffic. Notwithstanding that the FCC is the appropriate forum to resolve the substantive dispute between the Parties, we shall adopt US LEC's language on this issue as it appears consistent with the FCC determination in *Starpower v. Verizon South*. US LEC's proposed language which we shall adopt is stated below:

2.5.6 Measured Internet Traffic

Dial-up, switched Internet Traffic originated by a Customer of one Party ("Originating Party") on that Party's network at a point in a LATA, and delivered to a Customer or an Internet Service Provider served by the other Party ("Terminating Party"), on that other Party's network at a point in the same LATA. Measured Internet Traffic does not include: (1) any traffic that is carried by a third party carrier at any point between the Customer of the Originating Party and the Customer or Internet Service Provider served by the Terminating Party; or (2) traffic that is carried by a Party on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXX) basis.

We also find no objection to the inclusion of Verizon PA's language in Section 7.3.8 that memorializes the Parties' disagreement regarding rights and obligations in connection with intercarrier compensation for ISP-bound traffic using virtual NXX. Including this language could prevent future disputes by competing carriers that may opt into the instant interconnection agreement. As such, we shall adopt the language proposed by Verizon PA (i.e., "the Parties disagree as to the intercarrier compensation applicable to V/FX Internet traffic.") in Section 7.3.8 of the Interconnection Attachment.

Conclusion

Based on the foregoing, the Parties shall file an Interconnection Agreement which

is consistent with the resolution of the issues previously in dispute; **THEREFORE,**

IT IS ORDERED:

1. That within thirty (30) days of the entry date of this Opinion and Order, Verizon Pennsylvania Inc. and US LEC Pennsylvania, Inc. shall file, or cause to be filed, a final, Interconnection Agreement, pursuant to 47 U.S.C. § 252(e), the Commission's *Implementation Orders*, and which contains language consistent with the discussion in the body of this Opinion and Order

2. That the record in this case be marked closed.

END OF DOCUMENT